

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FULVIO FLETE-GARCIA

V.

U.S DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR UNITED STATES ATTORNEY

Case: 1:19-cv-02382
Assigned To : Unassigned
Assign. Date : 8/6/2019
Description: FOIA/Privacy Act

(I-Deck)

PETITION FOR PRELIMINARY INJUNCTION

TO THE HONORABLE JUDGE OF THE COURT :

Now comes the plaintiff FULVIO FLETE-GARCIA prosec in the above styled and numbered cause and files this first original PETITION FOR PRELIMINARY INJUNCTION against the UNITED STATES DEPARTMENT OF JUSTICE and in support thereof offers all of the following facts and circumstances :

DISTRICT COURT JURISDICTION OVER THE
PETITION FOR PRELIMINARY INJUNCTION

The court has original jurisdiction the PETITION FOR PRELIMINARY INJUNCTION under the FREEDOM OF INFORMATION ACT 5 USC 552 et Seq and the Federal Rules Of civil Procedure rule 65 .

VENUE

Venue in the District of Columbia is authorized by the FREEDOM OF INFORMATION ACT 5 USC 552 (a)(1)(B) which indicates in relevant part as follows :"The district court in the District of Columbia has jurisdiction to ENJOIN the United States from withholding agency records and to order the production of records improperly withheld" therefore venue in the District of Columbia is appropriate .



PARTIES

The Plaintiff is FULVIO FLETE-GARCIA register No.24190-038 . The Plaintiff is a Federal Prisoner in the Federal Bureau of Prisons and currently residing at the FEDERAL CORRECTIONAL INSTITUTION in Gilmer W.V. P.O.Box 6000 Glenville West Virginia 26351. The Plaintiff is serving a 156 month prison sentence for the violation of 8 USC 1326 ,42 USC 402(a)(7)(B) and 18 USC1028(a).

The Defendants are The United States Department of Justice. The Defendants can be served with summons and citation at 600 E street N.W.room 7300 Washington D.C.20530.

COMPLAINT No.1

On or about June 9,2019 the Plaintiff mailed a Freedom Of Information Act request to the Defendants THE UNITED STATES DEPARTMENT OF JUSTICE for the release of agency records . The request was received by the defendants on June 17,2019 .

Since that time more than thirty (30) days have lapsed and the defendants have not responded to the request . (The request for records dated June 9,2019 is attached and marked Exhibit 1)

COMPLAINT No.2

On or about June 21,2019 the Plaintiff mailed a FREEDOM OF INFORMATION ACT request to the Defendants THE UNITED STATES DEPARTMENT OF JUSTICE for the release of agency records . The request was received by the defendants on July 1,2019.

Since that time more than 20 days have lapsed and the defendants have not responded to the request . (The request for records dated June 21,2019 is attached and marked exhibit 2)

COMPLAINT NO. 3

On or about July 1,2019 the Plaintiff mailed a FREEDOM OF INFORMATION ACT request to the

Defendants THE EXECUTIVE OFFICE OF THE UNITED STATES ATTORNEY for the release of agency records , The request was received by the defendants on July 1,2019.

Since that time more than twenty (20) days have lapsed and the defendants have not responde to the request at all .

(The request for records dated June 24,2019 is attached and marked Exhibit 3)

COMPLAINT No.4

On or about June 24,2019 the Plaintiff mailed a FREEDOM OF INFORMATION ACT request to the Defendants THE EXECUTIVE OFFICE OF THE UNITED STATES ATTORNEY for the release of agency records . The request was received by the defendants on July 1,2019 .

Since that time more than 25 days have lapsed and the defendants have not responde to the request at all.(The request for records dated June 24,2019 is attached and marked Exhibit 4)

COMPLAINT No.5

On or about June 24,2019 the Plaintiff mailed a FREEDOM OF INFORMATION ACT request to the defendants the EXECUTIVE OFFICE OF THE UNITED STATES ATTORNEY for the release of agency records . The request was received by the Defendants on July 2,2019 .

Since that time more than 25 days have lapsed and the defendants have not responded to the request at all .

(The request for records dated June 24,2019 is attached and marked Exhibit 5)

SUMMARY OF THE FIVE (5) SEPERATE
REQUEST FOR THE RELEASE OF AGENCY
RECORDS MAILED TO THE DEFENDANTS

The request for records mentioned as complaint No.1 here above was mailed to the defendants by certified mail No.7018 2290 0000 1199 7880 on June 12,2019 . The United States Postal

records indicate that the defendants received the request on June 17,2019 .

In the request for records the Plaintiff request all of the following records

(1)A COMPLETE COPY OF THE DISCOVERY RELATED TO THE SUPERSEDING INDICIMENT FOR CRIMINAL CASE NUMBER 1:15-Cr-10381-LTS dated MARCH 9,2017 designated as docket No.90.

The discovery is related to the criminal file designated as UNITED STATES V FULVIO FLETE GARCIA . The case was prosecuted in the Federal District court for the district of Massachusetts in 2015- 2017.

The request for records mentioned as complaint No.2 here above was mailed to the defendants by certified mail No.7018 2290 0000 1197 4263 . The Postal records indicate that the defendants received the request on July 1,2019 .

In the request for records ,the plaintiff requested all of the following records :

(1) A complete copy of the transcripts, audio, and the video for the court room event that took place at the Federal court house related to the initial appearance before the Honorable Judge Jenniffer C. Boal dated May 4,2015.

(2)A complete copy fo docket entry No.9 related to the lower court file at the court house in Boston Massachusetts for criminal case No.1:14-mj-07101-JCB which indicates that the attorney for the United States is Steven York .

(The request was specifically for a copy of docket No.9 as filed in the Lower court)

(THE REQUEST SPECIFICALLY EXCLUDED THE COPY FILED IN THE COURT OF APPEALS)

(3) A complete copy of the Audio,video, and the transcripts related to criminal case number 1:14-mj-07101-JCB as docket No.9 filed in the lower court in Boston Massachusetts in which attorney Steven York was an active participant in the proceedings .

(The request was specifically for a copy as filed in the lower court as docket No.9)

(THE REQUEST SPECIFICALLY EXCLUDED THE COPY FILED IN THE COURT OF APPEALS)

(4)A complete copy of the Audio,Video, and the transcripts related to criminal case no.1:15-cr 10139-PBS-1 related to the court house event that took place at the Federal Court House for the ARRAINGMENT HEARING before the Honorable Judge Jenniffer C.Boal dated june 11,2015

as docket No.16.(The request was specific for a copy of the records as filed in the lower court)
(THE REQUEST SPECIFICALLY EXCLUDE THE COPY FILED IN THE COURT OF APPEALS)

(5) A complete copy of the Video,Audio, and the transcripts for the court room event that took place at the Federal Court House related to the INTRIM STATUS CONFERENCE before the Honorable Judge Jennifer C.Boal dated July 23,2015 as docket No.20.

(The request was specifically for a copy as filed in the lower court)

(THE REQUEST SPECIFICALLY EXCLUDED THE COPY FILED IN THE COURT OF APPEALS)

THE RECORDS LISTED IN ITEMS 1,2,3,4,AND 5 are records presented by the defendants in two (2) different Federal Courts they aare (1)The lower court in Boston Massachusetts and the Court of appeals for the first circuit..

THE PLAINTIFF REQUEST THE RECORDS FILED IN THE LOWER COURT IN BOSTON MASSACHUSETTS .

The request for records mentioned as complaint No.3 was mailed to the defendants by certified mail No.7018 2290 0000 1196 2871. The Postal records indicate that the defendants received the request July 1,2019.

In the request for records the plaintiff requested all of the following records:

- (1) A complec copy of all orders that reflect the commencement ,termination, and any extensions to the grand juries that heard evidence related to criminal case No.1:15-cr-10139-PBS-1.
- (2) Transcripts of the instructions and the charges given to any grand jury that heard evidence in the matter .
- (3) All grand jury voting records from all grand juries that heard evidence in the matter
- (4) All grand jury attendance records including the names ,times, and the dates of all of the grand jurors that heard evidence in the matter .

The request for records mentioned as complaint No.4 was mailed to the defendants by certified mail No.7018 2290 0000 1196 2888 . The Postal Records indicate that the defendants received the request on July 1,2019 .

In the request for records the plaintiff requested all of the following records :

- (1) A complete copy of all orders that reflect the commencement, termination, and any extension to the grand juries that heard evidence related to criminal case No.15-cr-10381.
- (2) Transcripts of the instructions and charges given to any grand juror that heard evidence in the matter .
- (3) All grand jury voting records from all grand juries that heard evidence in the matter.
- (4) All grand jury attendance records including the names, times, and the dates of all grand jurors that heard evidence in the matter .

The request for records mentioned as complaint No.5 was mailed to the defendants by certified mail No. 7018 2290 0000 1196 2895 . The Postal records indicate that the defendants received the request on July 2,2019.

In the request for records the plaintiff requested all of the following records :

- (1) A complete copy of all orders that reflect the commencement, termination, and any extensions to the grand juries that heard evidence related to THE SUPERSEDING INDICTMENT for criminal case No.15-cr-10381 dated March 9,2017.
- (2) Transcripts of the instructions and the charges given to any grand juries that heard evidence in the matter .
- (3) All grand jury voting records from all grand juries that heard evidence in the matter.
- (4) All grand jury attendance records including the names, times, and the dates of all the grand jurors that heard evidence in the matter..

PETITION FOR PRELIMINARY INJUNCTION

A petition for preliminary injunction is an extraordinary remedy that should be granted only when the party seeking the relief, by a clear showing, carries the burden of persuasion . In deciding whether to grant preliminary injunctive relief, the court must examine whether, (1) there is a substantial likelihood that the plaintiff will succeed on the merits of the case (2) the plaintiff will be irreparably harmed if the injunction

since that time more than thirty Five (35) days have lapsed since then and the defendants have not responded to the request for records mentioned in complaint No.1 in violation of the statutory time limitations of 20 days under 5 USC 552 (a)(1)(3)(A).

More than 20 days have lapsed for the request for records mentioned in complaint No.2 and the defendants have not responded at all in violation of the statutory time limitations of 20 days imposed by 5 USC 552 (a)(1)(3)(A).

More than 20 days have lapsed for the request for records mentioned in complaint No.3 and the defendants have failed to respond to the request in violation of the time limitations of 20 days imposed by 5 USC 552 (a)(1)(3)(A).

More than 20 days have lapsed for the request for records mentioned in complaint No.4 and the defendants have not responded at all in violation of the statutory time limitations imposed by 5 USC 552 (a)(1)(3)(A).

More than 20 days have lapsed for the request for records mentioned in request No. 5 and the defendants have not responded at all in violation of the statutory time limitations imposed by 5 USC 552 (a)(1)(3)(A)..

LIKELYHOOD OF SUCCESS ON MERITS
THE DEFENDANTS ARE ILLEGALLY
WITHHOLDING THE RECORDS
IN VIOLATION OF THE FOIA

The defendants are illegally withholding the records in violation of the FOIA and have completely failed to comply with 5 USC 552 (a)(1)(3)(A). In this case the defendants do not point to any of the exemptions set out in 5 USC 552 (a)(1)(8)(A)(b)(1)(2)(3)(4)(5)(6)(7)(8)(9)(c)(1)(2)(3). as a basis for withholding the records .

The plaintiff asserts that the records are agency records governed by the FOIA and that

the plaintiff is entitled to copies of the records as a matter of law therefore ,
THE PLAINTIFF IS LIKELY TO SUCCEED ON THE MERITS OF THE CASE .

THE PLAINTIFF WILL BE IRREPERABLY INJURED
IF THE INJUNCTION IS NOT GRANTED

The records requested by the plaintiff are exculpatory in nature . The agency records will show that the plaintiff is entitled to relief from a judgement of conviction under criminal case number 1:15-cr-10139 and criminal case number 1:15-cr-10381.

The plaintiff will suffer irreparable harm by remaining in illegal custody to serve out an illegal sentence and conviction of 156 months in Federal prison.

Moreover the plaintiff is set to suffer unnecessary loss of freedom ,loss of income ,loss of consortium, and any other general losses which are not recoverable.

THE INJUNCTION WILL NOT SUBSTANTIALLY
INJURE THE DEFENDANTS

The issuance of the Injunction will not substancially injure the defendants . The release of the records by the defendants to the plaintiff is governed by the FREEDOM OF INFORMATION ACT 5USC 552 (a)(1)(8)(A)(b)(1)(2)(3)(4)(5)(6)(7)(8)(9)(c)(1)(2)(3). The exemptions mentioned here protects the defendants from suffering harm because it authorizes the defendants to assert justified exemptions to the records requested by the plaintiff and prevent any harm from occuring against the defendants via the lawful withholding of records through sustained redactions of information within the records therefore no harm will occure against the defendants if the injunction is granted .

THE PUBLIC INTREST

The plaintiff states that the it is in the public intrest to release the records requested by the plaintiff to inform the public about the every day buisness of the government

and how the government administrates criminal justice public policy against minority members of the general U.S. population and the available access to justice and access to the courts .

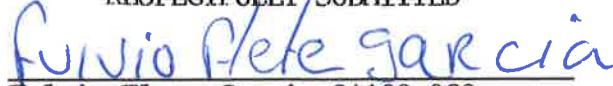
FINAL

THE PETITION FOR PRELIMINARY INJUNCTION IS INTENDED TO MOVE THE COURT TO ISSUE A PRELIMINARY INJUNCTION AGAINST THE DEFENDANTS TO PREVENT IT FROM ILLEGALLY WITHHOLDING AGENCY RECORDS SPECIFICALLY , THE PLAINTIFF MOVES THE COURT TO ORDER THE PRODUCTION OF AGENCY RECORDS ILLEGALLY WITHHELD MORE SPECIFICALLY, THE PLAINTIFF REQUEST THE COURT TO ORDER THE DEFENDANTS TO RELEASE ALL OF THE RECORDS ENUMERATED IN COMPLAINTS NUMBER 1-5 MENTIONED HEREIN ABOVE .

CONCLUSION

Plaintiff asserts that the defendants are illegally withholding agency records in violation of the FREEDOM OF INFORMATION ACT 5 USC 552 Et seq . The plaintiff believes that he is entitled to re-dress and to the relief requested and that the PETITION FOR PRELIMINARY INJUNCTION SHOULD ISSUE directing the defendants to release the agency records illegally withheld .

RESPECTFULLY SUBMITTED


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July 26,2019